

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 1827—PATENTS, DATA, AND COPYRIGHTS

### Subpart 1827.3—Patent Rights Under Government Contracts

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#### **1827.303 Contract clauses.**

In accordance with FAR 27.303, see 1827.373 for directions for using the clauses at FAR 52.227-11 and 52.227-13.

#### **1827.370 Scope of subpart.**

As authorized by FAR 27.300, in accordance with statutory requirements, this subpart sets forth NASA policy, procedures, and contract clauses with respect to inventions, discoveries, improvements, and innovations made in the performance of any work under any contract awarded by or for NASA. Except where the FAR is specifically cited, this subpart supersedes FAR subpart 27.3 in its entirety.

#### **1827.371 Definitions.**

*Administrator*, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

*Contract*, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or sub-contract executed or entered into thereunder.

*Made*, as used in this subpart, means conceived or first actually reduced to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

*Nonprofit organization*, as used in this subpart, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit-organization statute.

*Practical application*, as used in this subpart, means manufacturing, in the

case of a composition or product; practice, in the case of a process or method; or operation, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law and Government regulations, available to the public on reasonable terms.

*Reportable item*, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

*Small business firm*, as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors shall be used. (See FAR part 19.).)

*Subject invention*, as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

#### **1827.372 Policy.**

(a) *Introduction.* (1) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of any work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation of related property rights is based upon section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and

Agencies, dated February 18, 1983, and section 1(b)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. chapter 18, as amended.

(2) NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. chapter 18, as amended. The objectives with respect to any NASA contract subject to Section 305 of the Act are to obtain the prompt reporting of inventions, discoveries, improvements, and innovations made in the performance of any work thereunder (whether or not patentable) in order to protect the Government's interest in them and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(3) In addition, the objectives with respect to inventions made in the performance of work under all NASA contracts are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally funded research and development efforts; to ensure that these inventions are used to promote full and open competition and free enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the cost of administering policies in this area.

(b) *Contractor right to title.* (1) With respect to any NASA contract with other than a small business firm or a